

REMARKS

Claims 1-40 are pending. In accordance with the foregoing, claims 13, 21, 23 and 40 are amended to address objections made by the Examiner. New claim 41 is added and is supported at least by Figure 6. In the above-referenced Office Action, claims 1-40 stand rejected. Applicant respectfully traverses the rejections and requests a withdrawal of all rejections as set forth below.

The Examiner asserts that the declaration filed Jan. 29, 2008 does not comply with 37 CFR 1.67 (a). The declaration filed Jan. 29, 2008 was filed in response to the Office Action mailed Nov. 29, 2007 in which the Examiner asserted the original declaration filed Sep. 5, 2003 is defective. Applicant asserts that the declaration submitted Sep. 5, 2003 is in compliance with 37 CFR 1.67, as defined in 37 CFR 1.56. Specifically, the submitted declaration states that the inventors "acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56(a)." This language (as used in applicant's declaration received Sep. 5, 2003) was specified by the USPTO and was widely used prior to the 1992 amendment of 37 CFR 1.63(b).

The USPTO explicitly stated that the pre-1992 oaths comply with the now used language and would continue to be accepted by the Office. In its affirmation, the USPTO stated:

"Reply: The averments in oath or declaration forms presently in use that comply with the previous § 1.63 or § 1.175 will also comply with the requirements of the new rules.

Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules." See, 57 FR 2034 (emphasis added).

Therefore, applicant respectfully requests withdrawal of the objection to the declaration.

The U.S.P.T.O. has objected to the drawings. Applicant has corrected the drawings in the Replacement Sheets filed herewith, thereby obviating the objection.

The specification is objected to for failing to disclose the medical therapy delivery device having an anchoring device positioned along a distal end of the second portion and fixedly engaged with the manipulator wire. Applicant directs the Examiner's attention to paragraph 30 of the originally filed specification which states "Manipulator wire 140...is attached, using welding techniques or soldering for example, to a stainless steel anchoring band 160 positioned along distal end 118 of steerable portion 114...". Applicant respectfully submits that at least paragraph 30 discloses the subject matter referred to by the Examiner in the objection to the specification. Applicant requests withdrawal of the objection.

Claims 13-15, 17, 21 and 23-40 are objected to because "the anchoring band" lacked proper antecedent basis in claims 13, 21, 23, and 40. Applicant has corrected the claims in accordance with the forgoing amendments, thereby obviating the objection. Claims 23 and 40 are submitted with the proper heading.

Claims 1-40 stand variously rejected under 35 U.S.C. 103(a) as being unpatentable over Wardle (U.S. 4,748,969) in view of Truckai (U.S. 5,397,304) or over the Wardle and Truckai combination in view of additionally cited references. The rejection is premised on Wardle teaching "the outer layer forms a single shaft lumen having a first lumen portion positioned about the thru lumen tubing and a second lumen portion, offset from and in fluid communication with the first lumen portion, the second lumen portion having a first side wall, a second side wall and a bottom wall extending between the first side wall and the second side wall, the thru lumen tubing, the first side wall, the second side wall and the bottom wall positioning the manipulator wire within the second lumen portion." Contrary to the Examiner's position, Wardle fails to teach an outer layer forming a single shaft lumen meeting the recited limitations of independent claims 1, 23, and 40. Wardle's device includes a multi-lumen core 28 having an exterior cover 66. The multi-lumen core 28 cannot be interpreted as being an outer layer forming a single shaft lumen since shaft core 28 is neither the outer layer nor forming a single lumen (multiple lumens is directly contradictory to forming a single lumen).

On the other hand, if the Examiner's intention was to interpret the cover 66 as being the outer layer forming a single shaft lumen, then Wardle's device fails to provide an outer layer forming a second lumen portion offset from the first lumen portion and in fluid communication with the first lumen portion. The deflection conduit 30 is formed by shaft core 28, not by cover 66. Deflection conduit 30 is within the lumen formed by cover 66, not offset from it. While the multiple lumens formed by shaft core 28 are offset from each other within multi-lumen core 28, they are not in fluid communication with each other. Thus, the deflection conduit 30, or any other lumen formed by shaft core 28, fails to meet both of the claim limitations of being offset from a first lumen portion and in fluid communication with the first lumen portion. Clearly conduit 30 is not offset from the lumen of cover 66 through which it extends. The conduit 30 is not in fluid communication with any other lumen formed by shaft core 28. The conduit 30 is not formed by outer layer 66.

Wardle's objective head 6 shown in Figure 5 includes a deflection channel 56 that is open on one side toward the head tip 48. However, for the same or similar reasoning as above, this channel 56 does not meet both requirements of being offset from a first lumen portion and in fluid communication with the first lumen portion. Applicant respectfully submits "the outer layer forms a single shaft lumen having a first lumen portion positioned about the thru lumen tubing and a second lumen portion, offset from and in fluid communication with the first lumen portion" is not taught by Wardle nor the additionally cited references. For at least this reason, Applicant respectfully asserts the rejection is improper and should be withdrawn.

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the

present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Please grant any extension of time, if necessary for entry of this paper, and charge any fee due for such extension or any other fee required in connection with this paper to Deposit Account No. 13-2546.

Respectfully submitted,

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Date

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